

# **EXHIBIT A**

# Mystery remains over why Kim Foxx's office dismissed hoax charges against Jussie Smollett



A grand jury indicted Jussie Smollett on 16 counts of disorderly conduct in February. Cook County prosecutors on March 26, 2019, dropped all charges against Smollett on disorderly conduct charges. The 36-year-old actor vehemently denied lying to police and faking a homophobic attack in the Streeterville neighborhood on Jan. 29, 2019. (Chicago Tribune)

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**M**oments after “*Empire*” actor [Jussie Smollett](#) pleaded [not guilty to bombshell charges](#) of staging a hate crime on himself, Cook County prosecutors were already looking to cut a deal, the actor’s attorneys say.

After the brief March 14 arraignment, as reporters and spectators filed out of the courtroom, Smollett’s attorneys say the assistant state’s attorney handling the hot-button case asked them: What can we do to help this case go away?

That signal sparked a week and a half of [behind-the-scenes negotiations](#), ending with the stunning decision by State's Attorney Kim Foxx's office [to drop all 16 counts of disorderly conduct against Smollett](#) — a move that sparked outrage and calls for Foxx to resign.

With [the fallout from the Smollett case continuing unabated](#), the Chicago Tribune attempted to piece together what led to such an abrupt dismissal of a case that had garnered international interest.

Foxx's office has denied multiple requests by the Tribune to interview the lead prosecutor, who made the decision to drop the charges, or Foxx's top deputy, who signed off on the deal. The central question — why prosecutors made the about-face — largely remains a mystery.

Meanwhile, Foxx, who had [informally "recused" herself](#) from the case due to a conflict, has faced mounting pressure to explain in more detail why the prosecution of Smollett was so quickly abandoned. In [an op-ed in the Tribune](#), she backed off her office's initial stance that the case was strong, writing that they were uncertain of a conviction, but she offered no specifics.

At a news conference Saturday, Foxx declined to talk about "the substance of the case," saying the matter is "continuing to be reviewed by others" — but she did not say by whom.

But for the first time, Smollett's attorneys have provided their account of how the case concluded, saying in interviews with the Tribune that they'd rejected early offers of a deferred prosecution and insisted instead on a full dismissal. The defense team — which includes Los Angeles-based celebrity attorney Mark Geragos — blasted the case as weak while acknowledging they had been given only a sliver of [the evidence gathered by Chicago police](#).

Smollett's lawyers said they emphasized in talks with Foxx's subordinates that the case hinged on [questionable testimony by two brothers](#) who told police that Smollett had paid them to stage the Jan. 29 attack. They also hammered on public statements made by [police Superintendent Eddie Johnson](#) that they believed were inconsistent with evidence that prosecutors later presented in court.

On Friday, though, Johnson told the Tribune he did "nothing unusual" in holding a news conference to detail a high-profile investigation, defending everything he said as based on [evidence he still considers rock-solid](#).

"There was nothing that I personally interjected into my comments," Johnson said.

With the reason behind the dismissal still a mystery, the controversy has continued to rage. This week, the Chicago Fraternal Order of Police [staged a protest outside Foxx's Loop offices](#) calling on her to resign, and a suburban police chief association issued [a "no confidence" letter](#) attacking her lenient

approach to prosecuting low-level crimes. Mayor-elect Lori Lightfoot also weighed in, saying Foxx owed Chicago a more “fulsome” explanation of her office’s actions.

On the legal front, two separate petitions — one from [a former prosecutor in Foxx’s office](#) and another from [a retired Illinois appellate judge](#) — were filed this week calling for a special prosecutor to investigate how the Smollett case was handled and whether the actor could be re-charged.

Patricia Brown Holmes, Smollett’s lead Chicago attorney, told the Tribune in an interview last week that as the point person handling the negotiations, she tried to make it clear to Foxx’s office that it would be embarrassed if prosecutors took the case to trial and lost.

“What I walked them through was the legality (of the investigation),” Holmes said at her downtown law office. “Whether they believe he’s guilty or not, your case is crap. You can’t sustain your burden (of) proof beyond a reasonable doubt.”

## ‘How is that going to make your case look?’

The swift dumping of Smollett’s case seemed at stark odds with [the details laid out at the actor’s bond hearing](#) just a few weeks earlier. Prosecutors [at the Feb. 21 hearing](#) said they had a litany of evidence to prove Smollett orchestrated [an attack on himself](#) that frigid night in the Streeterville neighborhood.

Smollett, who is African-American and openly gay, claimed he was walking from a Subway sandwich shop to his apartment in the 300 block of East North Water Street about 2 a.m. Jan. 29 when two men walked up, yelled racial and homophobic slurs, hit him and wrapped a rope around his neck. He said they also yelled, “This is MAGA country.”

Police initially treated the incident as a hate crime. But their focus turned to Smollett after the brothers, who were arrested at O’Hare International Airport after returning from a scheduled trip to Nigeria, [began cooperating with police](#).

At [Smollett’s bond hearing](#), prosecutors detailed a seemingly airtight case that included phone records, surveillance footage, even a \$3,500 payoff check from Smollett to the two brothers, whose sworn testimony was “locked in” before a grand jury.

On the day that charges were dropped, Foxx’s top deputy, Joseph Magats, even defended the strength of the case, saying the dismissal was in no way an indication that Smollett was innocent.

"The fact that (Smollett) feels that we have exonerated him, we have not," Magats told the Tribune. "I can't make it any clearer than that."

Foxx, who had withdrawn from the case in February after revealing [she had contact with Smollett's representatives early on in the investigation](#), also defended the strength of the evidence in a round of media interviews that week. But two days later, with the political fallout growing, Foxx wrote a Tribune op-ed [saying for the first time that aspects of the evidence and testimony "would have made securing a conviction against Smollett uncertain."](#)

"For a variety of reasons, including public statements made about the evidence in this case, my office believed the likelihood of securing a conviction was not certain," Foxx wrote without elaborating.

Smollett's attorneys believe Foxx was referring to conflicting [statements made by Johnson](#) as well as by the attorney for the brothers, particularly in describing some of the key evidence in the case as well as Smollett's alleged motive for staging the attack.

In detailing the findings of the three-week investigation, Johnson said [at a nationally televised news conference on Feb. 21](#) that Smollett "attempted to gain attention" by sending [a letter](#) to himself at the "Empire" studios that contained threatening references to his race and homosexuality.

"When that didn't work, Smollett paid \$3,500 to stage this attack and drag Chicago's reputation through the mud in the process," Johnson said. "This stunt was orchestrated by Smollett because he was dissatisfied with his salary. So he concocted a story about being attacked."

Asked directly by a reporter if the brothers, Abel and Ola Osundairo, had given police the information about the check and Smollett's motive, Johnson said, "Yes."

The lawyer for the brothers, though, said in a series of media interviews of her own that her clients had not told police that Smollett sent himself [the letter](#) or that he planned the hoax because he was unhappy on the set.

"Factually, Jussie never told them what the motive was," attorney Gloria Schmidt told the Tribune last week. "I wouldn't have them speculate on that."

Schmidt also said the brothers had told police that the \$3,500 check was not actually a direct payment for the attack but ostensibly for training and nutrition that the brothers were providing to Smollett to help him shed pounds in advance of a music video shoot scheduled for Feb. 23.

“It’s complicated,” Schmidt said in one interview, characterizing the check as a legitimate payment for training but with a “wink” that Smollett also expected the brothers to do him a favor by taking part in the hoax.

Schmidt clarified the remarks in her interview with the Tribune, saying Smollett wrote the check not long after asking the brothers to “do something for me.”

“My conclusion was that the money was for the training but as a front for their participation in the attack,” she said.

Smollett’s attorneys said the motive alleged by Johnson made no sense and had not been properly investigated by the police. Not only was Smollett’s role as Jamal Lyon a pivotal part of [the ongoing “Empire” story line](#), but he also was pleased with his treatment by the studio, his attorneys said. After rumors spread that Smollett staged the attack because he’d heard he was being written off the show, the Fox network issued a statement calling the assertion “patently ridiculous.”

By the time that Smollett’s case was brought to court, the alleged motive had shifted somewhat. Prosecutors made no direct reference [in the bond proffer](#) to the actor being upset about his pay. Instead, prosecutors said Smollett indicated to the brothers “his displeasure” with the studio’s handling of the threatening letter.

Holmes said she made it clear to prosecutors that if the case went to trial, she intended to grill both Johnson and Schmidt under oath about their statements concerning Smollett’s alleged motive.

“Hearing (the brothers’) lawyer out there saying different things and contradicting herself, I’m calling her as a witness, right?” Holmes said. “So how is that going to make your case look? So now that creates all kinds of issues.”

If Foxx was indeed referencing her public statements as impacting the decision to dismiss charges, Schmidt said in her interview with the Tribune, the criticism is off base.

“I’d like to know specifically what (Foxx is) saying would have hurt her case,” Schmidt said. “She’s just finding a reason to blame us, I think, for her lack of conviction in securing a verdict.”

Schmidt also said it was highly unlikely she could have been forced to take the witness stand.

“They’d have to file a motion to disqualify me, and even if that motion were granted, then I have an attorney-client privilege with my clients, so no one can order me to talk about things that fall under that privilege,” she said. “I know I’m doing my job when that’s what the other side wants to do — call me as a witness. It’s not my first rodeo on that.”

## ‘Completely bamboozled’

Police say they were able to corroborate the brothers’ story about the hoax by reviewing footage from dozens of police and private surveillance cameras showing the brothers’ movements before and after the attack. But despite [all the surveillance video](#) and other evidence in the case, it seemed clear that the Osundairo brothers’ testimony would be crucial in proving Smollett guilty.

The actor’s seasoned attorneys believed they had plenty of ammunition to attack their credibility, including evidence of drug dealing, purportedly homophobic tweets sent by Ola Osundairo in 2015 and Ola’s aggravated battery conviction for a violent 2011 attack in Chicago’s Lakeview neighborhood.

“If the credibility of your witnesses is sunk, then you can’t carry your burden of proof,” said Brian Watson, one of Smollett’s Chicago-based attorneys. “You cannot put a witness on the stand and think you can carry your burden when they’ve probably contradicted themselves, when they have every motive to create a story that exculpates themselves.”

They also said that much of the evidence, particularly [text messages and phone records](#) between Smollett and the brothers, was taken out of context. Instead of proving a conspiracy, the communications showed that the brothers knew exactly where Smollett was going to be on the night he was attacked, the actor’s attorneys said.

There were also numerous phone calls and text messages between Smollett and Abel Osundairo both before and after the attack, according to court records. One text sent by Smollett four days before the incident was held up by prosecutors as evidence that the plot was being hatched.

“Might need your help on the low,” read Smollett’s text on Jan. 25, according to prosecutors. “You around to meet up and talk face to face?”

Smollett’s attorneys said the brothers only came up with their story that the attack was staged after two days in custody and under threat of facing felony hate crime charges. They questioned whether information had been fed to them by their attorney, who knew that police suspected the attack was a hoax and came up with details that “fit that narrative.”

“All of their evidence just ties the brothers to the crime,” said Tina Glandian, a New York-based attorney with Geragos’ firm. “There isn’t a single piece of corroborating evidence for the brothers’ story other than their self-serving statements that were made only after they were facing (possible) charges.”

Schmidt, however, told the Tribune the brothers were immediately willing to cooperate with police and that she never believed they were genuinely in danger of being criminally charged.



Glandian said text messages not disclosed by the police showed the brothers were indeed coordinating workout times with Smollett and providing dietary instructions. On the night of the attack, Smollett was supposed to train with the brothers after he flew back to Chicago, but his flight was delayed in New York for several hours and he had to cancel their plans, Glandian said.

Among the messages that were taken out of context by police was the one about Smollett asking Abel for help “on the low,” Glandian said. She said the actor was actually asking the brothers to get him an illegal steroid-like supplement available in Nigeria that would help him cut weight quickly.

“When (prosecutors) say their case had problems, I think that they knew, placed into context, these things make a lot more sense with the truth as opposed to the brothers’ concocted story,” Glandian said.

When told of the defense’s claim about the meaning of the “on the low” text, Schmidt laughed, saying that providing steroids to a client goes against their “code.”

“Their platform — the brothers’ — is all about being steroid-free,” she said. “Their whole thing is, you know, all-natural bodybuilding. It’s ridiculous.”

Schmidt also said the brothers were never in danger of being criminally charged, so they never asked for any kind of immunity in exchange for their testimony. Schmidt said she was alongside the brothers for their interviews with police and their testimony before a Cook County grand jury. At every step, she said, their story has been consistent.

“There was nothing that didn’t jibe,” Schmidt said. “There was nothing that was not factual, that was not consistent with what they had reported to police.”

Schmidt said she was as stunned as everybody when she learned the charges had been dropped. She had talked with the prosecutors’ office just days before and was given no indication of a problem. In fact, the Osundairo brothers had been assigned a victim-witness liaison from Foxx’s office to help them through the process of preparing for trial.

Schmidt was packing for a spring break trip with her family when she saw the breaking news reports that the charges had been abruptly dropped.

“No notice,” she said. “The opposite. The impression of us moving forward and then, completely bamboozled.”

*Tribune’s Jeremy Gerner and Annie Sweeney contributed.*



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